IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

RP.No. 180 of 2007(Y)

AGAINST THE ORDER IN WP (C) No.21627/2006
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PETITIONER: 1st RESPONDENT/PETITIONER:

J.G. PRAKASH, KOTTIL VEEDU,
MEPPAYUR P.O., KOZHIKODE DISTRICT.

BY ADV. SMT.S.MUMTAZ

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO CO-OPERATIVE DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE SALE OFFICER CUM SENIOR INSPECTOR,
KERALA STATE CO-OPERATIVE HOUSING FEDERATION LTD.,
KOZHIKODE.

3. MEPPAYYUR CO-OPERATIVE HOUSING
SOCIETY, KOZHIKODE, NO.D.1932.

BY ADV. SRI.N.L.KRISHNAMOORTHY
BY SENIOR GOVERNMENT PLEADER SRI.P.N.SANTHOSH.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M. JAMES, J.

R.P.No. 180 of 2007 in W.P.(C) No.21627 of 2006

Dated this the 28th February, 2007.

O R D E R

The defaulter filed the writ petition. It was disposed of on 12.12.2006. In it, Circular No.27/2006, dated 29.6.2006, was directed to be applied, while considering the benefits to be extended to the writ petitioner. The 3rd respondent in the writ petition preferred I.A.No.41/2007 praying that Circular No.27/2006 is inapplicable, and the Kerala State Co-operative Housing Federation is having separate circulars issued, and, therefore, prayed that Circular No.50/06-07 may be made applicable, instead of Circular No.27/2006.

2. After hearing both sides, I have passed an order, dated 9.1.2007, deleting Circular No.27/2006, dated 29.6.2006, and instead substituting Circular No.50/2006, dated 20.7.2006, and Circular No.55/2006-07, dated 18.10.2006. The writ petitioner has now filed this review petition praying that Circular Nos.50/2006 and 55/2006-07 are inapplicable, and what strictly applicable is Circular No.27/2006.

3. I have heard the arguments advanced by both sides. Counsel for the review petitioner submits that as per the bye-law of the 3rd respondent, Society, all the Circulars and directions issued by the Registrar of

the Co-operative Societies are applicable to the 3rd respondent, and in such circumstances, Circular No.27/2006 is to be adopted and applied. The review petitioner has not challenged Circular Nos.50/2006 and 55/2006-07.

4. The learned Government Pleader, on the other hand, submits that for the Co-operative Housing Federation, there are separate Circulars applicable to the day-to-day functions of the housing federation, and Circular No.27/2006 is applicable only to the other credit societies. As Circulars issued by the Managing Director of the Kerala State Co-operative Housing Federation has not been challenged, I find that the same will have to be applied, and hence, there is no review of the same arise.

5. The learned counsel for the review petitioner further submitted that the property of the review petitioner is scheduled to be sold in public auction on 20.3.2007. Counsel also expressed readiness to pay the balance amount due to the 3rd respondent in instalments.

6. Counsel appearing for the 3rd respondent submitted that an amount of more than Rupees Five Lakhs is due to the 3rd respondent, and the review petitioner had many a times defaulted the payments of the instalments granted to it, including in an earlier writ petition.

7. I had directed the review petitioner in my order, dated 9.1.2007, to file a fresh application within ten days from that date. Counsel submits that because of the filing of the review petition, such an application has not been filed.

8. After hearing both sides, and considering the peculiar circumstances of this case, I direct the review petitioner, the writ petitioner, the defaulter, to file a fresh application before the 3rd respondent, within ten days from today. The 3rd respondent shall hear the review petitioner, and fix the amount due from him to the 3rd respondent, applying the conditions and principles contained in Circular Nos.50/2006 and 55/2006-07, as this matter was pending on the time when Circular No.55/2006-07 was applicable.

9. The review petitioner shall remit an amount of Rupees One Lakh within one month from today to the 3rd respondent.

10. After fixing the amount due and deducting the amount of Rupees One Lakhs, as stated above, the balance amount shall be paid by the review petitioner, writ petitioner, in ten equal monthly instalments.

11. If the review petitioner defaults payment of two consecutive instalments, as above, the benefit of payment of the amount through instalments will be lost, and the 3rd respondent in that occasion shall be entitled to proceed against the review petitioner, according to the law.

12. In view of the above arrangements, the sale of the property of the review petitioner scheduled on 20.3.2007 will stand adjourned.

13. In the event of default or failure of any of the conditions, as stated above, the 3rd respondent, Housing Society, shall be entitled to start the sale of the property of the review petitioner, from the stage at which it was adjourned, in this order.

The Review Petition is disposed of accordingly.

J.M. JAMES,
JUDGE

nj.